

Matter of: Pipeliner Systems, Inc.

File: B-254481

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DIGEST

Protest that solicitation is unduly restrictive because it requires the rehabilitation of sanitary sewers with a cured-in-place pipe method without permitting the use of the protester's pipe lining method is sustained where the record fails to show that the agency has a reasonable basis for this requirement.

DECISION

Pipeliner Systems, Inc. protests the terms of invitation for bids (IFB) No. DACA27-93-B-0053, issued by the United States Army Corps of Engineers for replacing and rehabilitating sanitary sewers at Scott Air Force Base, Illinois. Pipeliner argues that the solicitation is unduly restrictive of competition since it prohibits the protester's method of lining sewer pipes.

We sustain the protest.

The contractor is to furnish all labor and materials to repair sewers at Scott Air Force Base including, among other things, replacing some existing sanitary sewer lines and inserting liners into other existing sewers. For those sewers which require lining, the IFB specified that:

"Existing sanitary sewer rehab[ilitation] shall be accomplished by installing a cured-in-place pipe (CIPP) lining on the inside of the section of sewer mains indicated. The CIPP shall consist of a resin impregnated flexible tube, formed to the

interior of the existing sewer pipe, by use of a hydrostatic head, and cured by injection of hot water within the tube. The lining shall extend from manhole to manhole and shall be installed through the existing manholes with[out] performing any excavation, except for lateral connections indicated. The lining and lining process shall be as per Insituform of North America, or InLiner U.S.A."

Pipeliner protests that the requirement of the CIPP lining method is unduly restrictive and improperly excludes the protester from competing. As an alternative to the CIPP method, Pipeliner argues that the agency should permit its sewer lining method, referred to as "U-Liner," which, according to the protester, meets or exceeds properties of the CIPP liner process at a lower price. In the U-Liner method, a deformed, or "U" shaped, polyethylene plastic liner is rolled on a spool, inserted into a manhole and then pulled through to the next manhole. Once it is in place, heat is applied to the inside of the U-Liner and, once it is heated to a specified temperature, pressure is applied to reshape the U-Liner to fit snugly inside the host pipe, repairing structural defects.

The agency argues that its decision to exclude the U-Liner and other lining methods was based on "sound engineering principles and represents the agency's minimum needs." The Army reports that two architect-engineer (A-E) firms assisted in preparing the specifications. One firm, Sverdrup, Inc., conducted a study of the sewer system at Scott Air Force Base and prepared a written report (the Sverdrup report). The agency explains that a second A-E firm used this study to design the project and select the lining method required in the IFB.

The Sverdrup report describes methods of sewer rehabilitation, including a number of lining methods such as the CIPP process required by the IFB. The report explains that in the CIPP process, which is also referred to as "inversion lining," a flexible polyester liner is inverted into a pipe through the use of hot water; this method imitates the physical process by which a sock is turned inside out. Once installed, the liner is then inflated and cured by the injection of heated water until the liner becomes sealed to the walls of the pipe, thereby repairing cracks or other structural defects.

¹The agency proceeded with bid opening after Pipeliner protested to our Office. One bid was received from Insituform Missouri, Inc. The agency has withheld award pending resolution of this protest.

The Sverdrup report also describes "traditional slip-lining," in which a nonflexible pipe, generally made of fusion-bonded high density polyethylene (HDPE), is pulled into the existing pipe. Because an HDPE liner is inflexible, installation requires excavation of the sewer. The Sverdrup report states that slip-lining results in a reduced hydraulic capacity of the sewer because the liner does not fit snugly against the existing pipe, resulting in a smaller inside diameter, and that slip-lining is not appropriate for misaligned sewers or those which have serious structural damage. The study also describes "[r]ecent developments in the slip-lining process" which eliminate the need for excavation with slip-lining techniques. According to the Sverdrup report, these "[n]ewer methods employ the insertion of a deformed (folded) polyethylene pipe which has been rolled on a spool." Once the liner is in place, "heat and a rounding device are used to reform the pipe into a round cross section." Current trade names for this type of sewer rehabilitation are U-Liner and NuPipe.

The Army argues that it considered "the various lining procedures" and selected CIPP lining as the only method meeting its needs. Specifically, the contracting officer states that the protester's method is unacceptable because "the slip-lining method proposed by Pipeliner results in reduced hydraulic capacity of the sewer because of the smaller inside diameter." The contracting officer also states that the pipes at the base are in poor structural condition and that "[s]lip-lining is not appropriate for misaligned sewers or those which have serious structural deficiencies." The agency also notes that the CIPP product is more "adaptable to variable field conditions" because it is flexible at installation, "unlike the slip-lining product."

Pipeliner responds that the Army misunderstands its product and explains that its U-Liner process is not slip-lining, in which an inflexible tube is inserted into the existing pipe after excavation. Rather, according to the protester, the U-Liner process is similar to the CIPP process since in both a flexible liner is inserted into the existing sewer pipe and is expanded to fit snugly against the walls of the pipe. In addition, the protester rebuts the agency's criticisms of its product, arguing, for example, that the U-Liner does not reduce the hydraulic capacity of the sewer since it fits "tightly against the host pipe," and "is capable of reconstructing offset joints due to its independent structural integrity." Also, the protester states that, contrary to the agency's assertion, the U-Liner is flexible so that excavation is not required for installation.

Agencies are required to specify their needs in a manner designed to promote full and open competition, and may only include restrictive provisions in a solicitation to the extent that they are necessary to meet the agency's minimum needs. Federal Acquisition Regulation (FAR) § 10.0002; Shred Pax Corp., B-253729, Oct. 19, 1993, 93-2 CPD ¶ 237; Moore Heating and Plumbing, Inc., B-247417, June 2, 1992, 92-1 CPD ¶ 483, aff'd, The Dep't of the Air Force--Recon., B-247417.2, Oct. 6, 1992, 92-2 CPD ¶ 227. Where a protester challenges a specification as unduly restrictive of competition, it is the procuring agency's responsibility to establish that the specification is reasonably necessary to meet its minimum needs. American Material Handling, Inc., B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183; Embraer Aircraft Corp., B-240602, B-240602.2, Nov. 28, 1990, 90-2 CPD ¶ 438.

The exclusion of the U-Liner method under the IFB here is not supported by the record. Specifically, although the agency relied on the Sverdrup report to justify restricting the lining specifications, that report supports the protester's assertion that allowing only the CIPP process is unduly restrictive.

The Sverdrup report includes a table which lists 50 sewer lines on the base and recommends various methods of rehabilitation, including sewer replacement, "lining," and "inversion lining" for the listed sewer lines. For the 50 sewer lines listed, under the heading "General Repair and Rehabilitation Recommendations," the table calls for "Lining of entire line" for 29 sewer lines and, for 1 additional line, for "Inversion lining of entire line."

Referring to the table, the report states:

"Where lining has been identified as repair, it is recommended that during the design phase consideration be given to the various lining methods to determine the most economical for each particular repair. Where inversion lining has been identified as a repair, it is recommended that this procedure be used in lieu of the other lining techniques."

Thus, although the agency relies on the Sverdrup report to support its decision to exclude the U-Liner process, that report specifically recommends inversion lining, or the CIPP process, for only a single sewer line on the base.² With

²The single line for which inversion lining is recommended is 321 feet in length while the remaining 29 lines for which lining was generally recommended included an approximate total of 7,800 feet of pipe.

respect to the other 29 sewers which require lining, in spite of the recommendation that "consideration be given to the various lining methods to determine the most economical for each particular repair," there is no indication in the record that either the A-E design consultant or the contracting agency considered this recommendation. Rather, as we explain below, the A-E design consultant appears to have recommended inversion lining for all sewers that need lining based on his belief that that process is superior to all others and the agency appears simply to have accepted that recommendation. In this latter respect, although we specifically asked the agency for its analysis of the Sverdrup report recommendations, no such analysis was provided.

We also agree with the protester that the Army has confused the protester's U-Liner process with the process which the Sverdrup report refers to as "traditional" slip-lining. For example, the contracting officer states that the "slip-lining method proposed by Pipeliner" is unacceptable because it "results in reduced hydraulic capacity of the sewer because of the smaller inside diameter." This concern is based on the contracting officer's apparent belief that a U-Liner, like a "traditional" slip-liner, is an inflexible pipe that is inserted into the existing sewer, leaving a space between the existing sewer pipe and the liner. As explained above, however, the U-Liner, once it is inserted and expanded, fits snugly against the inside walls of the existing pipe. In this respect, U-Liner is similar to the CIPP process. While the U-Liner product would result in a reduction of the inside diameter of the existing pipe because of the thickness of the liner, a CIPP liner also would reduce the inside diameter of an existing sewer for the same reason, and nothing in the record indicates that one would reduce the diameter more than the other. Under the circumstances, the record does not support the conclusion that the U-Liner process would result in "reduced hydraulic capacity" any more than would the CIPP process.

The contracting officer also confuses the protester's product with slip-lining when he concludes that the CIPP product is more "adaptable to variable field conditions" than the protester's product because the CIPP lining system is "completely flexible at installation, unlike the slip-lining product." As the protester explains, and the record shows, the U-Liner process uses a flexible liner and no excavation is needed for installation.³ The slip-lining

³The protester's product literature shows that the U-Liner, in its "U" shape, is coiled on reels in continuous lengths of up to 5,000 feet and transported to the job site for

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product, on the other hand, uses an inflexible pipe that is pulled in its fully rounded form through the existing sewer after excavation. Thus, the contracting officer's conclusion that the U-Liner product lacks flexibility and adaptability appears to be based on his erroneous belief that the U-Liner product is indistinguishable from "traditional" slip-lining.

As an additional reason to reject the protester's process, the contracting officer quotes the Sverdrup report: "Slip-lining is not appropriate for misaligned sewers or those which have serious structural deficiencies." Here again, the contracting officer appears to have confused the two processes. The protester states that the U-Liner product can be used in sewers with serious structural deficiencies because it is capable of reconstructing offset joints, or gaps between existing sewer pipes, due to its independent structural integrity and, in many cases, can expand to fill voids where offset joints are severe. The protester states that specifications, test results, and other information which it has submitted show the flexibility and strength of its product and show that U-Liner can be used to rehabilitate badly deteriorated pipes.⁴

Although we specifically asked the agency to address Pipeliner's assertion that the contracting officer has confused its product with slip-lining and that the U-Liner product is capable of repairing severely damaged sewers, the agency failed to address these contentions. In response to our request for additional information, the agency submitted a letter from the A-E firm that designed the project and

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installation. The liner is then attached to a cable and, without excavation of the site, is pulled by a winch through the sewer from one manhole to the next.

⁴While the contracting officer also asserts that the inversion lining process can "replace severely cracked sewers and even span sections where pieces of pipe are missing," the contracting officer does not assert that the U-Liner process cannot also be used to repair severely cracked sewers, or that it is not capable of repairing the sewers at the base. Moreover, the protester responds that the U-Liner process has been widely used to rehabilitate badly deteriorated pipes and, as explained above, the Sverdrup report, which was based on a study of the sewer system at the base, recommended inversion lining for only 1 sewer line out of 30 at the base. Under the circumstances, the record does not support the conclusion that the U-Liner process is unacceptable for the base because it cannot repair severely cracked sewers.

prepared the specifications. That response does not demonstrate that the U-Liner process would not meet the agency's needs.

For instance, although the A-E consultant states that CIPP "is available in the full range of pipe sizes (8" through 18") requiring rehabilitation," the protester's sales literature shows that its U-Liner is available in 4" to 18" diameters. In addition, although the consultant states that the CIPP process has been time tested, with American Society for Testing and Materials (ASTM) specifications having been developed for the rehabilitation process, Pipeliner's literature states that the U-Liner process has been in use since 1988 and that the U-Liner product meets "all appropriate" ASTM specifications. The agency's consultant also states that the "CIPP process provides maximum flexibility in dealing with host pipe offsets during the installation process," and that "offsets do occur in the existing piping to be rehabilitated." As we explained, however, the protester has provided test results and other information which purportedly show that the U-liner is capable of reconstructing offset joints and filling voids where offset joints are severe. While it is clear that the consultant believes that the CIPP process is superior to all other liner processes, the consultant's response to the protest does not dispute what the test results show and otherwise does not demonstrate that the U-Liner process does not meet the agency's minimum needs.⁵ Raymond Corp.-- Recon., B-251405.2, Aug. 26, 1993, 93-2 CPD ¶ 124.

Based on the record before us, we agree with the protester that the specification is unduly restrictive. It appears that the agency may not fully understand the U-Liner product and how it differs from slip-lining, and that the U-Liner

⁵The A-E consultant also states that the U-Liner process requires temperature control equipment at the insertion point to maintain quality control and that "[m]inimal disruption during installation was considered an important factor in our design." The protester's literature, however, states that it "can rehabilitate damaged and leaking pipelines in a matter of hours without digging" and that "[w]ith the compact installation equipment and the small number of crew members needed to install the liner . . . there is no interruption of traffic or services at the rehabilitation site." Additionally, according to the IFB, the CIPP liner is "formed to the interior of the existing sewer pipe, by use of a hydrostatic head, and cured by injection of hot water within the tube." Thus, the CIPP process also requires equipment for installation and nothing in the record demonstrates that installation of a U-Liner is any more disruptive than installation of a CIPP liner.

product may well meet the agency's needs. See Shred Pax Corp., supra; Bardex Corp., B-252208, June 14, 1993, 93-1 CPD ¶ 461. In view of the foregoing, we sustain Pipeliner's protest. Accordingly, by separate letter of today to the Secretary of the Army, we are recommending that the agency reevaluate whether the U-Liner method and similar pipe lining methods meet its actual minimal needs and, if so, issue a revised IFB to permit offers of such other methods. We also find Pipeliner entitled to the costs of filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f)(1), Pipeliner's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted to the Army within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States